

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN B. AHRENS, JR. and DEPARTMENT OF THE ARMY,  
CORPS OF ENGINEERS, Kansas City, MO

*Docket No. 00-518; Submitted on the Record;  
Issued December 5, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision<sup>1</sup> on July 8, 1998 in which it reversed the December 29, 1994, May 3 and June 26, 1995 decisions of the Office on the grounds that the Office improperly terminated appellant's compensation effective January 8, 1995. The Board determined that the Office had not presented sufficient medical evidence to justify its determination that appellant had no residuals after January 8, 1995 of his accepted employment injury.<sup>2</sup> The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On September 14, 1998 the employing establishment offered appellant a limited-duty position as a personnel management specialist. The position involved the provision of advice regarding a range of personnel matters, including the recruitment and placement of employees.

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<sup>1</sup> Docket No. 95-3103.

<sup>2</sup> In February 1988 the Office accepted that appellant, then a 52-year-old employee relations specialist, sustained writers' cramp in his right hand due to his work. He received compensation due to disability related to his employment injury. Appellant began working for private employers in the 1990s and the Office adjusted his compensation based on his wage-earning capacity. In December 1991 the Office denied appellant's schedule award claim for his right upper extremity. By decision dated December 29, 1994, the Office terminated appellant's compensation effective January 8, 1995 on the grounds that he had no employment-related disability after that date. By decision dated May 3, 1995, the Office affirmed its December 29, 1994 decision and, by decision dated June 26, 1995, the Office denied appellant's request for merit review.

Appellant was to be provided with voice-activated software for his computer in order to minimize the use of his hands on the job.<sup>3</sup> He refused the position offered by the employing establishment.

By decision dated November 9, 1998, the Office terminated appellant's compensation effective December 6, 1998 on the grounds that he refused on offer of suitable work. By decisions dated January 7, July 8 and August 20, 1999, the Office denied appellant's requests for merit review.

The only decisions before the Board on this appeal are the Office's January 7, July 8 and August 20, 1999 decisions denying appellant's requests for review on the merits of its November 9, 1998 decision. Because more than one year has elapsed between the issuance of the Office's November 9, 1998 decision and November 18, 1999, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the November 9, 1998 decision.<sup>4</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>5</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>7</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>8</sup>

In support of his reconsideration requests, appellant submitted various statements in which he argued that it was improper for the Office to terminate his compensation. Appellant claimed that the personnel management specialist offered by the employing establishment was not suitable because he did not have the vocational skills for the job and the physical requirements were beyond his work restrictions. He also asserted that his actual wages as a security guard should have been used to determine his wage-earning capacity. However, the submission of these arguments would not require reopening appellant's claim as he previously presented similar arguments and the Office has already considered them. The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record

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<sup>3</sup> In a report dated August 17, 1998, an attending physician, indicated that appellant could only write for a few minutes per hour.

<sup>4</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>5</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. §§ 10.606(b)(2).

<sup>7</sup> 20 C.F.R. § 10.607(a).

<sup>8</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

does not constitute a basis for reopening a case.<sup>9</sup> Appellant also submitted a document from an Equal Employment Opportunity Commission proceeding, excerpts from the Act and copies of Board decisions. However, these documents would not be directly relevant to the main issue of the present case, *i.e.*, whether the Office properly terminated appellant's compensation because he refused an offer of suitable work. He did not adequately explain how these documents would relate to the facts of his own case. The Board has held that the submission of evidence, which does not address the particular issue involved, does not constitute a basis for reopening a case.<sup>10</sup>

In the present case, appellant has not established that the Office abused its discretion in its January 7, July 8 and August 20, 1999 decisions, by denying his request for a review on the merits of its November 9, 1998 decision under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

The August 20, July 8 and January 7, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
December 5, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>10</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).